

## **PLANNING COMMISSION MINUTES**

**February 1, 2011**

**7:00 p.m.**

Present: Chairman Tom Smith, Vice Chairman Dave Badham, Von Hill, Barbara Holt, Michael Allen, newly appointed Sean Monson, City Council Representative Beth Holbrook, City Attorney Russell Mahan, Planning Director Aric Jensen and Recording Secretary Connie Feil.

Absent: City Engineer Paul Rowland

Chairman Tom Smith welcomed all those present and introduced Sean Monson as the newest Planning Commission Member. Mr. Smith had all the Commission Members and Staff introduce themselves to the public in attendance.

Beth Holbrook made a motion to approve the minutes for January 18, 2011 as written. Barbara Holt seconded the motion and voting was unanimous in favor.

### **1. Consider preliminary and final commercial site plan approval for Lodder Automotive located at 560 S. 500 W., John Lodder, applicant.**

John Lodder, applicant, was present. Aric Jensen explained that Mr. Lodder is requesting preliminary and final site plan approval for a 6,000 sq ft commercial building at 560 S. 500 W. The proposed structure will be located west of the existing Lodder Automotive site.

The existing site is approximately one acre in size and is located on the northwest corner of 600 S. and 500 W. The Millcreek storm channel runs through the property from southeast to northwest in an underground culvert. There is an existing, 3,400 sq ft automotive repair building located on the site near 500 West. The remainder of the site is either asphalt or unimproved.

The proposed commercial building is composed of approximately 5,250 sq ft of vehicle repair space, and 800 sq ft of office space, all located at grade. The office space is located adjacent to 600 South, and will have a ledger stone and hardi-board exterior. The repair shop structure will be a natural color masonry block exterior with parapet wall and cornice. The applicants have requested that the Commission approve a one (1) foot rear yard setback on the west side, matching their neighbor on that side. Staff feels that there is no need for landscaping in that location, and that a one (1) foot setback is appropriate from a maintenance perspective.

Water and sewer are located in 600 South, and power is located overhead. Currently there is a power line across the proposed building site that will have to be relocated as part of the construction process. All run-off will drain immediately into the Millcreek Culvert. Although it is not currently shown, the applicants will probably be required to have an oil/water separator because they are an automotive repair business.

The current site plan shows 24 parking stalls, which meets the requirements for this project. The landscaping will need to be increased slightly to reach the minimum 15% requirement.

Staff recommends preliminary and final commercial site plan approval for the revised Lodder Automotive commercial site plan with the following conditions:

1. The landscaping plan and landscaping be completed to the satisfaction of the Planning Director prior to final occupancy approval.
2. Any red line corrections be made as required by staff.
3. The existing power line be relocated and a new public utility easement be recorded as necessary.

John Lodder explained that he has outgrown the space for his business. Over the past few years his clientele has increased and the building is too small.

There was a discussion regarding parking, landscaping and oil/water separator. Dave Badham made a motion to recommend to the City Council preliminary and final site plan approval for Lodder Automotive subject to the conditions outlined by Staff and the following additional condition:

4. The South Davis Sewer District and Davis County Storm Drain staffs shall review the project and determine if an oil/water separator or similar device is necessary before discharging on site runoff.

Von Hill seconded the motion and voting was unanimous in favor.

**2. PUBLIC HEARING CONTINUED – Consider approving or disapproving a Conditional Use Permit for a cell tower for T-Mobile located at 723 N. 400 E., Jared White, applicant.**

Jared White, applicant, was present. Aric Jensen explained that on January 18, 2011, the Planning Commission opened a public hearing regarding the new request for the proposed cell tower. The applicant called in advance of the meeting and stated that he was unable to attend due to vehicle trouble, and therefore no decision was rendered and the public hearing was continued until the next meeting of February 1, 2011

The current proposal is based on the conditions of the Commission's previous approval in 2008. There does not appear to be any material changes to the proposed site or neighborhood since the Commission's original approval. A copy of the Commission's previous conditions of approval is included as part of the recommended action.

A conditional use permit should be approved unless it can be shown that it is not possible to impose conditions that would mitigate any reasonably anticipated detrimental effects. The negative impacts typical of any cell tower are obstruction of view and unsightliness. Unlike ham radio towers, cell towers generally don't disrupt TV signals, cordless phones, or other electronic

devices. In fact, cellular arrays are frequently located on top of office buildings, near police stations, and in other areas where electronic equipment is used extensively.

Unless the Commission can conclusively find that there is a site that meets the needs of the T-Mobile and has less impact on the community, then staff recommends approval with the following conditions:

1. The main pole shall not exceed 24 inches in diameter at any point above ground level.
2. Any cell array shall not protrude horizontally more than 3 feet from the side of the main pole.
3. The height of the pole and any attachment shall not extend more than 80 feet above the level of the existing parking lot, as measured at the closest point to the proposed tower.
4. All equipment and related infrastructure shall be located behind a locked, 6' high, open style, fenced enclosure.
5. The area around the fenced enclosure shall be landscaped with only partially obscuring plants for security and aesthetic reasons.
6. All work, including any future co-location or modification, shall be done after receiving a Bountiful City building permit.
7. No exterior wire or conduit shall be allowed.

Jared White explained that with the economy and budget cuts the tower was not built in 2008. The demand exists and has made it necessary to have the tower built. He mentioned that with the approval of the Conditional Use Permit in 2008 there was no reason to contact West Bountiful City for their input on using their water tank to locate the tower. The signal will be the same in either location.

Mr. White explained that the company feels for the residents and understands their concerns. With the demand for cell phones, internet etc., cell towers are required. People want the services but they don't want any towers in their neighborhood. Towers have to exist to provide adequate service.

The public hearing was opened for those with comments and concerns.

The following are the names of the residents who voiced their concerns. Their concerns were the same as in the meeting held on January 18, 2011 regarding the value of their homes, the height of the tower, the visual affect, and the radiation it will produce.

James Hampton, Sean Marshall, Jason Clark, and Pat Haslam.

The public hearing was closed without further comments.

After a lengthy discussion Von Hill made a motion to continue the public hearing to give Mr. White the opportunity to check with West Bountiful to locate the tower on their water tank site. Barbara Holt seconded the motion and voting was unanimous in favor.

**3. PUBLIC HEARING – Consider approving or disapproving a variance to allow a covered patio in the back yard setback at 2386 S. Boulton Way, Scott & Cathy McDonald, applicants.**

Scott & Cathy McDonald, applicants, were present. Aric Jensen explained that Scott and Kathy McDonald are requesting a variance from the provisions of section 14-4-105 F. of the Bountiful City Land Use Ordinance, to allow a covered patio located closer than 10 feet to their rear property line. The applicants have already constructed the attached patio structure without a building permit and have received a notice of violation from the City. A copy of the letter and photographs provided by the applicants explaining why they believe they should be granted a variance are attached to the minutes.

Mr. Jensen made a computer presentation showing the property lines, the location of the covered patio and the home which abuts their back yard. Mr. Jensen explained that the patio cover is located 1 ft from the property line which makes it 9 ft too close to the property line. Having an attached structure or detached structure would not be allowed this close to the property line. The International Codes, Fire Codes and the City Codes will not allow this structure.

The following is a conforming copy of Utah Code 10-9a-702, which outlines the duties of the appeal authority in relation to variances (underlining added to indicate necessary findings for approval):

**10-9a-702. Variances.***(1) Any person or entity desiring a waiver or modification of the requirements of a land use ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply to the applicable appeal authority for a variance from the terms of the ordinance.(2) (a) The appeal authority may grant a variance only if:(i) literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;(ii) there are special circumstances attached to the property that do not generally apply to other properties in the same zone;(iii) granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;(iv) the variance will not substantially affect the general plan and will not be contrary to the public interest; and(v) the spirit of the land use ordinance is observed and substantial justice done.(b) (i) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (2)(a), the appeal authority may not find an unreasonable hardship unless the alleged hardship:(A) is located on or associated with the property for which the variance is sought; and(B) comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.(ii) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (2)(a), the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.(c) In determining whether or not there are special circumstances attached to the*

*property under Subsection (2)(a), the appeal authority may find that special circumstances exist only if the special circumstances:(i) relate to the hardship complained of; and(ii) deprive the property of privileges granted to other properties in the same zone.(3) The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.(4) Variances run with the land.(5) The appeal authority may not grant a use variance.(6) In granting a variance, the appeal authority may impose additional requirements on the applicant that will:(a) mitigate any harmful affects of the variance; or(b) serve the purpose of the standard or requirement that is waived or modified.*

Mr. Jensen explained that the procedures for granting a variance are quite rigid. One of the requirements is that an approval authority must determine that a proposed variance request meets all of the provisions of the Code, or else it cannot grant a variance. Staff recommends that the Commission review the applicants letter in detail decide whether or not it meets all of the criteria contained in State statute.

The public hearing was opened for all those with comments and concerns.

Ross Larsen, residing at 116 Penman Lane, is in support of the variance. The McDonalds have property rights and the right to use their back yard in private. The lights on the home next door are a nuisance.

Debbie Holbrook submitted a petition signed by several neighbors in favor of the variance. The surrounding neighbors have no issues with the covered patio.

Amy Levitt is also in support of the variance.

Jane Gray, residing with the McDonald's, is uncomfortable with the neighbors next door. They look into the windows during the day and at night. When she is out in the back yard she feels that they are watching her. With the covered patio she can enjoy the back yard without fear. She asked that the variance be granted.

The public hearing was closed without further comments.

Scott and Cathy submitted a second letter explaining the reasons they are asking for the variance (the letter will be attached to the minutes). They feel that the configuration of their lot and the problems with the neighbors justifies a variance.

There was a discussion regarding the applicant's property rights, the configuration of the lot, the State and City Codes.

Barbara Holt made a motion to approve the variance to allow a covered patio in the back yard setback located at 2386 S. Boulton Way. Mrs. Holt feels that they have met the requirements to grant a variance and reasons set forth in the two letters submitted to the Planning Commission.

Beth Holbrook seconded the motion and voting past by majority vote. Barbara Holt, Beth Holbrook, Tom Smith and Dave Badham voting aye. Von Hill, Michael Allen and Sean Monson voting nay.

**4. PUBLIC HEARING CONTINUED – Consider revisions to Title 14, Bountiful City Land Ordinance.**

Aric Jensen presented a handout with some red-lined changes from 1-18-11 Planning Meeting. Mr. Jensen asked that the Planning Commission review the changes and discuss them on the meeting being held on 2-15-11.

**5. Planning Director's report and miscellaneous business.**

Mr. Jensen had no further business to conduct.

Meeting adjourned at 9:00 pm